

JUDGE FAILLA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Applicant, :

- against - :

JAMES DAVID O'BRIEN, :

Respondent. :
-----X

19 MC 0468

19-MISC-_____

ECF CASE

[PROPOSED] ORDER TO SHOW CAUSE

WHEREAS, the Securities and Exchange Commission ("Commission") applied for an order directing Respondent James David O'Brien ("O'Brien") to show cause why he should not be ordered to appear for testimony as called for by the Commission's investigative subpoena served on O'Brien on May 15, 2019 (the "Subpoena");

WHEREAS, the Court has considered the application filed by the Commission and the memorandum of law and declaration, with exhibits, filed in support of the application;

WHEREAS, based upon these documents, the Court is satisfied that the Commission has made a sufficient and proper showing in support of the relief sought in its application, and therefore:

I.

IT IS HEREBY ORDERED that O'Brien shall appear before this Court at 10:00 a.m. on November 18, 2019 in Room 618 of the United States Courthouse, 40 Foley Square, New York, NY 10007, to show cause why the Court should not issue an Order:

(a) directing O'Brien to appear for testimony at the Commission's offices in the New York Regional Office in response to the Subpoena no later than December 16 2019;

(b) directing that, in the event that O'Brien does not appear for his testimony described in paragraph (a) by the date specified above in the paragraph,

(i) the Commission will have established a *prima facie* case of civil contempt against O'Brien for his failure to comply with the Order directing him to appear for testimony; and

(ii) O'Brien may be held in civil contempt for failure to comply with that Order without further notice or hearing; and

(c) granting the relief in the foregoing paragraphs (a) through (b) in the event that O'Brien fails to appear before this Court at 10:00 a.m. on November 18, 2019 in Room 618 of the United States Courthouse, 40 Foley Square New York, NY 10007.

II.

IT IS FURTHER ORDERED that a copy of this Order and the papers supporting the Commission's application be served upon O'Brien by transmitting the papers to O'Brien or his counsel in this matter on or before October 25, 2019 by email, facsimile, personal service, any overnight mail delivery service, or any method that would satisfy the requirements for service of process under Federal Rule of Civil Procedure 4.

III.

IT IS FURTHER ORDERED that O'Brien shall file and serve any opposing papers in response to the application no later than November 4, 2019 at 5:00 p.m. Service shall be made by delivering the papers via email to gizzip@sec.gov and ellenbogenb@sec.gov. The Commission shall file and serve any reply papers by November 11, 2019 at 5:00 p.m. The Commission shall serve any reply papers on O'Brien or his counsel by email, facsimile, courier, or any overnight mail delivery service.

SO ORDERED

Dated: October 18, 2019
New York, NY

Kathleen Roche Fialla
UNITED STATES DISTRICT JUDGE